

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:11CR00081AGF
)	
DOMINIC MICHAEL ORLANDO,)	
)	
Defendant.)	

ORDER

This matter is before the Court on the parties' pretrial motions. All pretrial motions were referred to United States Magistrate Judge Mary Ann L. Medler under 28 U.S.C. § 636(b). Defendant Dominic Michael Orlando filed a Motion to Suppress. (Doc. #83). In his motion, Defendant asserts that the statements he made to law enforcement on October 25 and 26, 2010, including statements that resulted in the search of his vehicle and residence, should be suppressed because Defendant was not given his *Miranda* warnings prior to his statements. Defendant further asserts that any evidence seized as a result of those searches should be suppressed.¹ The United States also filed a motion for Pretrial Determination of the Admissibility of Defendant's Statements. (Doc. #61). The case is set for trial on August 1, 2011.

Judge Medler held an evidentiary hearing on May 17, 2011, and thereafter issued a Report and Recommendation (Doc. #117), recommending that Defendant's motion to suppress be denied, and that the government's motion for pretrial determination of

¹ Defendant also filed certain discovery requests which, in light of the government's response, required no ruling by the Court.

Defendant's statements be granted. Defendant filed a general objection, objecting to the factual findings and conclusions of law contained in the Report and Recommendation, without any further specification or basis.

When a party objects to a Report and Recommendation concerning a motion to suppress in a criminal case, the court is required to “make a de novo review determination of those portions of the record or specified proposed findings to which objection is made.” *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003) (quoting 28 U.S.C. § 636(b)(1)).

The Court conducted a *de novo* review of the motion to suppress, including listening to the testimony of the witnesses and reviewing the exhibits introduced at the hearing. Based on that review, the undersigned concludes that the Magistrate Judge made proper factual findings and correctly analyzed the issues. The Court finds that Defendant was not in custody when he made his statements, such that no *Miranda* warnings were required, and that Defendant's statements, in any event, were not the result of any interrogation. Further, the statements made by Defendant that resulted in the searches of his residence and vehicle on October 25 and 26, 2010, were volunteered, and Defendant knowingly, voluntarily and intelligently consented to both searches. The Court therefore adopts the Report and Recommendation and overrules Defendant's objections regarding the motion to suppress.

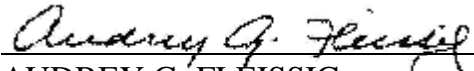
Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Judge [Doc. #117] is **SUSTAINED, ADOPTED, AND INCORPORATED** herein.

IT IS FURTHER ORDERED that Defendant's Motion to Suppress [Doc. #83] is **denied**.

IT IS FURTHER ORDERED that the Motion of the United States for Pretrial Determination of the Admissibility of Defendant's Statements [Doc. #61] is **granted**, with regard to the statements of Defendant Orlando.

A final pretrial conference will be scheduled by separate Order.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of June, 2011.